

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 58 of 1995

in

SPECIAL CIVIL APPLICATION No 4188 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HB CHAUHAN

Versus

SURENDRANAGAR JOINT MUNICIPALITY

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Appearance:

MR JD AJMERA for Petitioner

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE S.D.PANDIT

Date of decision:02/07/96

JUDGEMENT

H.B. Chauhan, original petitioner in SCA No. 4188/93 has preferred the present appeal against the decision of learned single Judge dated 19.8.94. Appellant- petitioner has come in this court with a case that the respondent no.2 was appointed contrary to the provisions of Gujarat Municipality Act( hereinafter referred to as the Act) and that the selection of the respondent no.2 as a Chief Officer was not also proper and correct. The claim of the petitioner was resisted by the respondents by filing their affidavit in reply. After hearing both the sides, the learned single Judge found that the appointment was made in the year 1990 and the petition challenging the said appointment, filed by the petitioner in the year 1993 was bad for delay and laches and he also found that on merits, the claim of the appellant was not tenable in law.

2. Being aggrieved by the said decision, the appellant has come in L.P.A. before us. The appellant was working in the said municipality at the time of the said selection and he continued to work there. The appointment was made in the year 1990 and his petition filed in the year 1993, is obviously bad on account of delay and laches. Therefore, we are in full agreement with the findings of the learned single Judge that the petition was bad for delay and laches.

3. It is contended by the learned advocate for the appellant that in view of the provisions of section 55 read with section 271 and the rules framed by the said municipality under section 271(a) of the said Act the selection of respondent no.2 by the executive committee is illegal and invalid. Before considering in details this submission of him, it is necessary to consider the provisions of sections 47,48 and 49 of the said Act. Section 47 provides for appointment of Chief Officer Health Officer and Engineer. It clearly mentions that a Chief Officer shall be appointed by the municipality and a person who is to be appointed as a Chief Officer shall be a graduate of a recognised University or or qualified engineer or a person who holds a diploma in Local Self Government of an Institute recognised by the State Government and has experience of the municipal administration work for not less than 7 years. It is very pertinent to note that it is not the claim of the appellant that respondent no.2 is not fulfilling the said qualifications. He is also not disputing that respondent no.2 is appointed by the said municipality. His only grievance is regarding his selection. Section 48 of the

said Act makes provision for removal of the Chief Officer and it clearly lays down that a Chief Officer shall be removeable from office or reducedg in rank or suspended only by a Resolution by the municipality by atleast 2/3rd of the total number of the then councillors and it further provides that he shall not be fined. Section 49 provides for the duties of the Chief Officer. Therefore, if the provisions of sections 47 and 48 are taken together, it would be quite clear that appointment of Chief Officer is to be made by the municipality. Section 53 provides for the formation of the executive committee. It provides that the executive committee shall exercise functions allotted under the Act and all the powers of the municipality as provided by the Act.

4. The learned advocate for the appellant is relying upon section 55 of the said Act. Section 55 runs as under:

"55(1) Notwithstanding anything contained in sub-section(2) of section 53 other committees consisting of such number of councillors as the municipality may decide, may be appointed to exercise the powers and perform the duties of the municipality in respect of any purpose not being, where a Pilgrim Committee is appointed powers or duties referred to in section 54. The executive committee shall not exercise any powers or perform any duties which such Committee has been appointed to exercise or perform.

(2) The members of such committees shall be elected by the municipality in accordance with the rules framed under clause (a) of section 271 and such members shall hold office for a period of one year."

We have already stated that sub-section 2 of section 55 of the said Act is providing powers of the executive committee. On account of the provisio of section 55, inspite of forming executive committee, it is open for every municipality to have various other duties as provided by section 55. He is relying upon section 271(a) of the said Act which runs as under:

"271(a) regulating the conduct of its business and the delegation of any of its powers or duties to any committee or to the chief officer or subject to the provisions of section 54 the powers or duties of any committee to any other

committe or to the chief officer and the appointment and constitution of committees under section 55;

But along with the above provisions the provisions of sub-section (d) must be read. Thesaidiprovisions are as under:

(d) determining the staff of officers and servants to be employed by the municipality and their powers and duties;"

He has further drawn our attention to the Rules framed by the said municipality under section 271(a) which are sanctioned by the Director of Municipality, Gujarat State. Said Rules are titled as Surendranagar Municipality, Recruitment and Condition of Service of Employees Rules 1984. Said Rules are framed in view of the poweers given under section 271(d). According to the learned advocate, when the said municipality has formed the selection committee , the seclection of the Chief Officer must also be by the said selection committee. If the above quoted provisions of section 271(d) are taken into consideration. then it would be quite clear that Rules are to be framed for determining staff of the officers and servants to be employed by the municipality and their powers and duties. The Rules also give definition of to the Selection Committee as under:

"Selection Committee" means a committee constituted by the municipality for the selection of employees in the municipality"

Therefore, th8e Selection Committee is meant for Selecting the Staff and servantgs of the officer and onot for the officers themselves. There is a ispecific provision for the appointment of the Chief Officer iounder section 47. We have already quoted the sub-section (a) of section 271. Sub-section (a) of Section 271 clearly lays down that the municipality can delegate its powers of determination of staff, officer and servants to either a committee or Chief Officer. Chief Officer's appointment is provided separately by section 47. Chief Officer is equated u/s 27(a) with a Committee. Therefore, if Chief Officer or a Committee can select employees of the municipality the contention raised by the learned advocate for the appellant that selection of the Chief Officer is to be done only by a selection committee in view of the provisions of section 55 read with section 271(d) could not be accepted.

5. In the instant case, the selection was made by the executive committee after interviewing all the candidates and had made its recommendations and the appointment was made by the Municipality. It must be further mentioned here that present appellant petitioner had applied for the said post and he had also gone through the process of selection. At that time he had not raised any objection for the said process of selection. Therefore, he cannot turn round about and contend that said selection process is illegal and improper. Thus the conduct of the present appellant petitioner also does not allow using of the discretionary powers under article 226 of the Constitution. The learned single Judge has considered the contention raised by the appellant in the proper context and has rightly rejected the claim of the appellant. We do not find any illegality in the said order of the learned single Judge. We thus hold that the LPA deserves to be dismissed and we accordingly dismiss the same with no order as to costs.

(C.K.Thakker.J)

(S.D.Pandit.J)